

December 8, 2010

TO: Federal Communications Commission

FROM: North Central Education District

SUBJECT: CC Docket No. 96-45

CC Docket No. 02-6

Request for Review and Requests for Waiver:

FY2005 - 477997 FRN 1320199

FY2006 - 526334 FRN 1450354

Frontier TeleNet is an ORS 190 Entity created by Intergovernmental Agreement (IGA) under the authority of Oregon Revised Statutes Chapter 190.

It was created solely to address the absence of affordable high speed bandwidth and advanced telecommunications services in three remote rural Eastern Oregon counties; and by extension the best interests and welfare of thousands of remote rural Oregonians and the communities in which they live.

In short, the NCESD-Frontier TeleNet relationship represented - and still represents - a unique solution to a unique problem. It was not created to provide a vehicle whose purpose was to circumvent and/or violate any rule, regulation or law; and ample evidence follows to not only support but strengthen that premise. The primary purpose of the partnership was - and is - to provide affordable broadband access in schools across three counties and 3750 square miles; and secondary purposes included the creation of communications platforms for law enforcement, emergency services, public health and local government; plus the opportunity to create and retain jobs in struggling local and regional economies.

The personal enrichment of any elected official or any other person(s) associated with the NCESD - Frontier TeleNet construct and/or the NCESD-County relationship(s) was never, and is not now, a goal or incremental function of the partnership; and any suggestion, presumption, representation or accusation to the contrary is provably false.

In retrospect, we readily acknowledge that there are certain things we should have done differently. We should have created and maintained a higher degree of functional separation between the NCESD and Frontier TeleNet. While Frontier TeleNet represented unique opportunities for resource

aggregation and collaborative efforts; hidden to us at that time was the potential for appearances of impropriety and conflicts of interest.

Since it is the organizational construct that is essentially in question, we will first explain why the signatories to the IGA became partners in this worthwhile endeavor.

Frontier TeleNet was, as much as anything else, the result of a confluence of common needs.

In the late 1990's and early 2000's, The North Central Education Service District (hereafter "NCESD"), in its role as the primary regional education service provider across 3750 square miles of rugged and inhospitable terrain subject to severe winter weather conditions; needed to devise a methodology for delivering distance learning services to ten locations in six different school districts. This distance learning program was called the Frontier Learning Network, and was unique in its design as a two-way interactive virtual learning environment. While deliberating the possible program delivery options, it was discovered that conventional telephone-based hardwire lines in each of the remote school locations were not only prohibitively expensive, but simply unavailable in the capacity required by the interactive distance learning format.

For that same reason, K-12 students in the region had no access to high speed internet bandwidth (in contemporary terms "broadband access") - affordable or otherwise - and so were even further disadvantaged by their remoteness than they had been prior to the emergence and development of internet-enhanced education.

Gilliam, Sherman and Wheeler counties, comprised of the same area as the NCESD service region - nearly 20% larger than the states of Delaware and Rhode Island combined; were during that same 1990/2000 period contracting for 9-1-1 dispatch services, plus all law enforcement and emergency services communications, with another county - obviously not the best solution but at that time the only option available.

In remote, sparsely populated (in this case only slightly more persons per square mile than the state of Alaska) counties and communities; anchor institutions such as local government, public safety, public health and schools have as a matter of necessity cemented relationships in order to meet the needs of the region's residents in a manner that their urban counterparts have not. In fact, because of the limited resources available to them, their very survival depends on cooperation, collaboration and a willingness to seek common solutions to common problems. Nearly without exception, it is not feasible within the already fragile economies of remote rural communities to raise local taxes or

assess additional fees to pay for expanded and/or enhanced levels of service - the human and capital resources required to enable such solutions simply do not exist.

More often than not, these common rural solutions to common rural problems do not fit the established urban template related to how such situations "should" be addressed. This very real urban-rural divide is present within the state of Oregon and is only magnified by the literal and cultural distances between frontier rural Eastern Oregon and Washington, D.C.

Frontier rural America and urban America, though they share a common area on the map - are not the same place. Each has its own unique problems, and those problems are most often addressed with uniquely different solutions - it is essential to acknowledge that such differences are the result of necessity, not mere convenience. A similar or even the same problem in an urban community where the population density is 1500 people per square mile is rarely resolved with the same solution as a frontier rural area where those same 1500 people are spread across 1500 square miles. One fundamental reason that the solution process is so remarkably different is that there are enormous differences in resources available to address the problem - chief among them social capital (people) and investment capital (money).

The average high school in the Portland, Oregon metropolitan area offers over 200 courses - the average high school in frontier rural Oregon offers 45 courses. Urban high schools in Oregon operate five days per week - 90% of the frontier rural high schools operate four days per week because they don't have the resources to operate five. As a result, and out of necessity rather than convenience; frontier rural students are educated in a vastly different fashion than their urban counterparts.

So, it is from this perspective that the NCESD-Frontier TeleNet relationship should be viewed - a unique solution to a unique problem. It was not created to provide a vehicle whose purpose was to circumvent and/or violate any rule, regulation or law. The primary purpose of the partnership was to provide affordable broadband access in schools across three counties and 3750 square miles; and secondary purposes included the creation of communications platforms for law enforcement, emergency services, public health and local government; plus the opportunity to create and retain jobs in struggling local and regional economies.

In fact, two purposes the Frontier TeleNet partnership was originally intended to serve were to -1) ensure available and affordable technical services for the partner counties; and -2) help ensure that service technicians employed by the NCESD could retain their jobs. It was a timely collaborative effort to the mutual benefit of the parties and by extension to the collective benefit of county citizens and students alike. It's reasonable to ask, at this point - "why are one or two jobs so important?" The

answer is because ONE (1) job in the tri-county area is equivalent to, for example, six thousand one hundred sixty-five (6165) jobs in New Jersey. Further, from our counties' perspective, the nearest IT technicians other than the NCESD technicians are a minimum of 150 round-trip miles away. Therefore, at the time Frontier TeleNet was formed it appeared to be a pragmatic singular solution to multiple problems.

Fundamental to genuine recognition of the differences between frontier rural and urban economies is the realization that there are no economies of scale in remote regions because there is no scale. Absent the ability or opportunity to take advantages of economies of scale, remote rural economic models - including educational institutions and local government - function on the basis of aggregated resources. At the time Frontier TeleNet was formed, the NCESD technical department represented just such an opportunity to share a valuable local/regional resource. Within that context, then, it would appear in retrospect that while the partnership formed by the NCESD and the three counties did not by its creation violate any FCC/USAC rules; some of the functions for which it was created did - unbeknownst to the founders - place the partnership in a position of appearing to violate certain rules governing conflict(s) of interest.

In order to better understand this and other fundamental, virtually unchangeable causative elements precipitating the need for and resulting in the creation of the NCESD-Frontier TeleNet partnership; we have on several occasions requested - and we repeat the request - that FCC and/or USAC officials come to Condon and the tri-county area so that they might appreciate not only the formidable barriers we have overcome and what we have accomplished in terms of creating and sustaining affordable broadband access; but even more importantly the truly devastating human consequences of being forced to repay \$1.5 million in rightfully earned funds would have on the students, schools and communities we serve. Further, we have stated that we will pay for any and all expenses associated with such a visitation. We have nothing to hide - give us the opportunity to prove it.

At the center of the USAC vs. NCESD/Frontier TeleNet disagreement is the simple matter of intent. The only difference - albeit the most important one - between innocent misinformation and a lie is the provable existence of an intent to deceive. Absent such intent, a mistake is just a mistake, and only a mistake.

For instance, we do not assume that the intent of certain FCC/USAC rules was/is to functionally deny remote rural students access to affordable broadband by establishing rules that in the real world prohibit remote rural service providers from serving schools. To presume such would simply not be reasonable, and we readily acknowledge that.

Yet, USAC has apparently assumed from day one that our intent was to circumvent and/or violate USAC rules for the specific purpose of - what? USAC's presumption of guilt is not only wholly

unsupported by the evidence - in this case evidence comprised of NCESD and Frontier TeleNet answers to USAC's questions - but such obviously misplaced presumption is categorically contradicted by the evidence.

Again - we have a standing offer to pay all FCC/USAC travel expenses associated with an official visit to our area in order to reasonably and equitably resolve this matter - sooner rather than later.

Another example of intent - Frontier TeleNet was formed to provide affordable broadband access where none existed and there was ample reason to assume it never would exist (as a matter of fact, other than the Frontier TeleNet wide area network it still does not exist, so that assumption has proven to be correct). Frontier TeleNet constructed the wide area network to provide services that were - and are - otherwise unavailable - not to exclude other providers from engaging in service provision, but rather to ensure the availability of affordable broadband access across the region, thereby establishing and maintaining a measure of digital parity. The reality of the remote rural marketplace is such that private providers could not make a legitimate business case for investing several million dollars in a market that according to all forecasts would never pay back. The best comparison is to consider the electrification of rural America through creation of the REA in 1935 - it remains today one of the best examples of government investing in its citizens, or perhaps more appropriately government providing a vehicle for citizens to reinvest their own money in themselves.

The Frontier TeleNet partnership is in many ways similar to the REA - using public money to invest in assets - in this case telecommunications assets - that private industry could understandably not justify - but assets nevertheless representing essential public purpose-specific infrastructure and services that best serve the general welfare of our students and citizens.

Having established a proper frame of reference for why Frontier TeleNet exists, why the organizational construct was selected, and why the NCESD is a partner - we will put these elements of the USAC vs. rural Eastern Oregon in an abbreviated but clear question-and-answer format. It is instructive to note that all these questions/accusations and answers/replies have already been asked and answered, in many cases the same questions/accusations have been asked and answered multiple times.

USAC is demanding recovery of 2005 and 2006 E-rate funds because:

The NCESD superintendent sat on the board of Frontier TeleNet, thereby compromising the

competitive bidding process.

While it is true that the superintendent sat on the Frontier TeleNet board, it is utterly impossible for him to have compromised the competitive bidding process because there was ONLY ONE BIDDER. The reason there was only one bidder is addressed in the preceding text. Further, there is ample evidence proving that all elements of the competitive bidding process were provably and properly addressed.

The service provider (Frontier TeleNet) hired the applicant's (NCESD's) employees...to serve as the technical experts for the service provider.

It is true that Frontier TeleNet contractually engaged the services of - not hired - NCESD technical employees to provide technical services. It is also true that this is one of the specific reasons the counties and NCESD created Frontier TeleNet - from the counties' perspective to save taxpayer dollars, keep revenues in the region and receive more cost-effective services; from the NCESD's perspective to save jobs and keep families with their much-needed resources in frontier rural communities. These were our honest and honorable intentions - in retrospect we acknowledge that this might appear to be in violation of USAC E-Rate program rules, but it flies in the face of reason to continue assuming the intent of five county judges, two ESD superintendents and about 50 other people somehow conspired over a period of almost ten years to intentionally receive funding in an inappropriate manner. Particularly when none of these individuals was - or is - in a position to benefit from such conspiracy.

Again, it is essential to remember that in a remote rural area where the fiscal health of most communities is extraordinarily fragile, job retention is central to economic sustainability. It is within that context that the actions of the original Frontier TeleNet board of directors pertaining to the NCESD technical department can be most easily understood. Rather than a deliberate violation of USAC/E-Rate program rules, such action(s) are merely another example of how local government best serves the interests of remote rural folks through the aggregation of limited - but local - resources.

Also, the NCESD and Frontier TeleNet have taken remedial action pursuant to this element of USAC's denial by contracting for technical services with organizations outside the partnership.

The USAC recovery demand further claims "FCC rules require applicants...to conduct a fair and open

process. The applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information or allow it to unfairly compete in any way. Since the applicant has engaged in an improper relationship with a selected service provider, which represents the conflict of interests and compromises the competitive bidding process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider."

It would be improper to deliberately compromise any competitive bidding process, we obviously don't dispute that claim; however - and this speaks to the heart of the matter - under the circumstances the appearance of such compromise was simply unavoidable. Why? Because one unintended consequence of forming Frontier TeleNet and subsequent construction of the wide area network was that there was and is only one service provider in the area who can provide the required bandwidth and thereby meet the bidding specifications of the RFP/competitive bidding process in question. Therefore, absent any actions that could have compromised the competitive bidding process there is no violation of program rules. While we do acknowledge there exists an appearance of impropriety, under the circumstances no improper behavior could possibly have unfairly biased the process.

In urban areas there is always more than one service provider because the market will support more than one provider. Competition among providers in densely populated areas is focused on getting a bigger piece of the ever-expanding pie - but the economic reality of remote regions is that the pie is not only small; but is becoming ever smaller - and there aren't enough pieces to support more than one provider.

So, then - are the open and honest actions of the NCESD/Frontier TeleNet partnership, being a victim of virtually unavoidable circumstance; somehow equivalent to the intentional violation of FCC/USAC program rules? Should the owner of a grocery store in a town of 450 people be deemed guilty of suppressing free trade simply because she/he happens to own the only store in town?

We respectfully suggest the answer to both questions is "No".

Essential to understanding our position in this matter is accepting the fact that we have never knowingly violated any FCC/USAC E-Rate program rules. Further, while it may appear that the competitive bidding was compromised - or that the process would have been compromised under different circumstances - it is clear that in these specific instances no such compromise, and/or by extension any violation, of program rules could have occurred. Did we make mistakes? Yes. Were they anything more than inadvertent mistakes? No.

Fundamental to reaching reasonable and fair conclusions in this matter is acceptance of the premise that the negative consequences of inadvertent errors should be proportionate. In other words, while

people and organizations should pay for their mistakes - our honest mistakes do not warrant USAC's excessively punitive actions any more than a speeding ticket warrants capital punishment.

In closing, we do not deny that we made mistakes. And, though honest and inadvertent, they still placed us in the position of appearing to violate E-Rate program rules. We understand as well that USAC has a job to do, and we respect that obligation. We believe, however, that -1) demanding recovery of \$1.5 million in E-Rate funds; and -2) the withholding of \$436,000 in current and rightfully earned funds - solely on the basis of perceived wrongdoing - is neither a reasonable nor just reconciliation of the matter. The mistakes we made simply do not warrant that measure of punishment. The frontier characteristics of this region further amplify such punishment, to the extent that the various tangential effects of repaying those funds would be truly catastrophic. It would, in fact, result in the virtual elimination of affordable, high capacity broadband access for schools, law enforcement, emergency services, public health, local government and communities at large across this 3750 square mile remote rural region.

We have already effected remedial action pursuant to all noted inconsistencies with E-Rate program rules. The NCESD Superintendent has in fact informed USAC officials he would be willing to resign from the Frontier TeleNet Board of Directors if doing so is prerequisite to equitable and timely resolution of this dispute.

We respectfully submit that a just resolution to this matter would be represented by an appropriate fine commensurate with the comparative gravity of the mistakes we admittedly made.

FORMAL APPEAL AND REQUEST FOR WAIVERS

On the basis of the information, evidence and historical perspective provided herein, combined with our answers to questions previously asked by USAC; Frontier TeleNet and the North Central Education Service District do hereby appeal USAC Commitment Adjustment Decisions pursuant to:

- FY2005 - APP 477997 FRN 1320199 -- \$794,136.00
- FY2006 - APP 526334 FRN 1450354 -- \$782,791.20

We maintain that these funds were, without exception, rightfully earned; and were not received as a result of any improper or inappropriate influence or actions in deliberate violation of any rules governing conflict(s) of interest.

For those same reasons, We Further Request the immediate release of all currently eligible funds being withheld by USAC:

- Invoice ID 1204272 -- \$218,452.00
- Invoice ID 1405706 -- \$218,452.00

We believe we have made a thorough and legitimate case clearly delineating the position that we have not violated FCC/USAC rules governing conflicts of interest and/or the competitive bidding process. We are not attorneys, however, and we acknowledge the possibility that we might be in violation of one or more rules not contemplated in our appeal. If it is determined to be that we are in violation, we request a waiver to FCC Order 00-167. In addition, due to the uniqueness of our remote rural circumstances and the provable fact that we have done nothing deliberately wrong; we feel wholly justified in requesting any and all waivers necessary to provide us the ability to continue serving the schools which depend entirely upon us for affordable broadband access. In essence, we request waivers in those instances where our structure, functions and/or the relationships engendered thereby place us unavoidably in violation of FCC/USAC rules governing conflicts of interest.

As we have demonstrated, the manner in which broadband services are provided in remote rural areas differs substantially from how such services are delivered in more densely populated urban regions. Absent the creation of innovative public and public-private partnerships, the requisite economic resources and market conditions in frontier rural communities are not sufficient to justify the significant investment of financial and technical capital necessary for deployment of wide area, high capacity broadband infrastructure.

It is in fact the very creation of those necessary partnerships - from a pragmatically and extraordinarily limited number of qualified partners - that places frontier rural service providers and customers in relationships that appear to be compromised by conflicts of interest. Unlike urban areas, the solution to mitigating such conflicts is not simply changing the structure or the partners - for all practical purposes, in remote rural areas there are no other partners - and fundamentally altering the structure or functionality of the partnerships would ultimately result in dissolution and the subsequent cessation of broadband services - permanently.

The question is not whether remote rural service providers and customers should be granted waivers as a matter of convenience, rather they should be granted such waivers as a matter of necessity; because they simply cannot avoid violating the letter of the FCC rules governing conflicts of interest generally. While it can be the provable intent of remote rural providers and customers to comply with the spirit of such rules, due to the inescapably limited number of providers and customers they cannot reasonably meet the test as defined by the letter of the rules.

We do not believe the FCC or USAC created conflict of interest rules with the intention of arbitrarily

excluding legitimate frontier rural broadband providers and/or customers from engaging in broadband service provision. Nor do we believe they intended to further disadvantage frontier rural residents by denying them access to affordable broadband services. Similarly, Gilliam, Sherman and Wheeler counties and the North Central Education District did not create the Frontier TeleNet partnership with the intention of deliberately violating FCC conflict of interest rules.

We do believe the answers and evidence provided by the North Central Education Service District and Frontier TeleNet wholly support our appeal and requests for waiver; while categorically disproving USAC claims that the competitive bidding process was compromised. Regardless of appearances, the fact remains that there was only one qualified bidder in 2005 and 2006. Further, it has been proven that quoted bidding rates subsequently charged by that single qualified bidder were - and are - not only competitive but lower than rates charged to and paid by other frontier rural education service districts for similar broadband services.

The E-Rate reimbursement program "is intended to ensure that schools and libraries have access to affordable telecommunications and information services" (<http://www.usac.org/sl/>) - presumably regardless of whether those schools and libraries are in New York City or frontier rural Oregon.

This intention has been and continues to be honestly and honorably served by Frontier TeleNet and the North Central Education Service District. Simply put, without them there would be no such access.

Date: December 8, 2010

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